

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRAINTECH, INC., a Nevada corporation,

Plaintiff/Counter-Defendant,

v.

Case No. 09-10454

ADIL SHAFI, an individual,

Honorable Victoria A. Roberts
Magistrate Judge Virginia M. Morgan

Defendant/Counter-Plaintiff,

v.

FREDERICK WEIDINGER, an individual,

Counterclaim Defendant.

**DEFENDANT ADIL SHAFI'S MOTION TO COMPEL DISCOVERY,
OR ALTERNATIVELY, FOR AN EXTENSION OF DISCOVERY FOR THE PURPOSE
OF TAKING THE DEPOSITION OF FREDERICK WEIDINGER**

Defendant, Adil Shafi, through his attorneys, Berry Moorman P.C., hereby moves for an order compelling discovery or, in the alternative, for an additional extension of time in order to take the deposition of Frederick Weidinger. In support of this motion, Shafi avers as follows:

1. This Court held a telephone status conference on June 15, 2010, concerning the status of this case and the completion of discovery. The order entered following the status conference required the two principal depositions to be completed in 45 days.

2. As of this date, despite multiple requests, only two days have been proposed for Counterclaim Defendant Rick Weidinger's deposition. The dates proposed are August 5 and 6, 2010. Shafi's counsel is not available on August 6, 2010. Forty-five days expires on July 29.

3. Shafi has diligently sought dates for Weidinger's deposition since May 12, 2010, but to date has only been provided with two dates beyond the Court's cut-off.

4. Alternatively, Adil Shafi requests that the Court convene a scheduling conference where the parties will be required to select dates for the deposition of Mr. Weidinger.

5. Pursuant to local rule, the undersigned certifies that there have been multiple communications on the subject matter of the relief sought, but such communications have not resulted in a resolution of the scheduling issue.

Respectfully submitted:

BERRY MOORMAN P.C.

By: /s/ James P. Murphy
James P. Murphy (P36728)
Attorneys for Defendant/Counter-
Plaintiff/Third Party Plaintiff
535 Griswold, Suite 1900
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(313) 496-1200

Dated: July 20, 2010

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EASTERN DISTRICT OF MICHIGAN
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FREDERICK WEIDINGER, an individual,

Counterclaim Defendant.

**BRIEF IN SUPPORT OF DEFENDANT ADIL SHAFI'S MOTION TO COMPEL
DISCOVERY, OR, IN THE ALTERNATIVE, FOR A FURTHER EXTENSION OF
DISCOVERY FOR THE PURPOSE OF TAKING THE
DEPOSITION OF FREDERICK WEIDINGER**

Defendant, Adil Shafi, through his attorneys, Berry Moorman P.C., submits the following brief in support of his motion to compel discovery, or, in the alternative, for a further extension of discovery.

I. ISSUE FOR DECISION

Whether the Court should compel the Deposition of Frederick Weidinger.

II. MOST APPROPRIATE AUTHORITY

Fed. R. Civ. Pro. 16 and 37.

III. ARGUMENT

Despite the fact that this case was stayed for almost four months, beginning one month before the Court held the June 15 status conference, Shafi's attorney began communicating with the new attorneys for Braintech and Weidinger to discuss scheduling. On May 12, 2010, Shafi's counsel emailed Weidinger's new counsel suggesting that dates be coordinated for depositions of both Adil Shafi and Frederick Weidinger. A response to this email was received, but the offer to undertake scheduling was declined. On June 8, 2010, Adil Shafi's counsel once again sent an email to counsel for Braintech and counsel for Weidinger specifically inviting counsel to discuss scheduling issues in advance of the status conference with the Court. This email resulted in no progress.

Following the status conference, on June 22, Shafi's counsel circulated an email discussing discovery issues, including Rule 30(b)(6) topics and inviting the attorneys to "plug in dates or at a minimum block some time off so that we can schedule these depositions no later than mid-July." There was no response to the June 22 email.

Given the lack of response, on June 28, Adil Shafi's counsel prepared notices of deposition scheduling Frederick Weidinger's deposition for July 15 and 16, 2010 (copies attached as Exhibit A). One week later, on July 2, 2010, Braintech's counsel advised that Mr. Weidinger was not available for deposition on July 15 or 16.

Despite prior multiple requests, it was not until July 7, 2010, before there was any response from Frederick Weidinger's counsel (Mr. Greeves) regarding scheduling. On July 8, 2010, Shafi's counsel placed a telephone call to Mr. Greeves and again

requested that Mr. Greeves provide dates for the deposition of Fredrick Weidinger. One week later, on July 14, 2010, dates were proposed for Mr. Weidinger's deposition for August 5 and 6, 2010 (the parties have agreed to 1.5 days of deposition for each principal). Counsel for Weidinger was immediately informed that Shafi's counsel had a preexisting matter in Wayne Circuit Court for most of the morning on August 6, 2010 and could not change that date in order to proceed with the deposition. In addition, this Court's Order of June 15, 2010, required that the depositions be completed no later than July 30, 2010. No alternate dates have since been provided.

There is very little time left in the month to schedule Mr. Weidinger's deposition. Despite the diligent efforts of Shafi's counsel to obtain firm, committed dates to take Mr. Weidinger's deposition, only two proposed dates have been provided since Shafi's counsel first undertook to communicate with opposing counsel on May 12, 2010, and those dates are outside of the Court ordered deadline.

Defendant Shafi left his schedule wide open through the month of July in order to appear for a deposition. It is also important that Mr. Shafi attend Mr. Weidinger's deposition as a party. Mr. Shafi is not available during most of the month of August due to a planned vacation and other work commitments for his new startup venture. As a result of this, it is likely discovery will have to continue for at least another 45-day period in order to obtain dates for Mr. Weidinger (so that Mr. Shafi can attend with all counsel of record).

Accordingly, Defendant Shafi requests that the Court convene a status conference and permit some additional period for discovery. Despite the efforts of Shafi

and his counsel to take the deposition of Frederick Weidinger, there has been very little cooperation. If scheduling problems persist, Defendant Shafi requests that the Court select the dates and require parties to attend after a status conference.

Respectfully submitted,

BERRY MOORMAN P.C.

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Dated: July 20, 2010

CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2010, J. P. Murphy, being first duly sworn, served Defendant Adil Shafi's Motion to Compel Discovery, or Alternatively, for an Extension of Discovery for the Purpose of Taking the Deposition of Frederick Weidinger, Brief in support of same, and Proof of Service of same, via email and First Class mail upon:

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